

**UNITED STATES BANKRUPTCY COURT
FOR THE DISTRICT OF MASSACHUSETTS**

In Re:)
)
) Bankruptcy No. 09-44760-HJB
Carmen M. Bailey,)
) Chapter 13
)
Debtor.)
)

**UNITED STATES OF AMERICA’S MOTION TO DISMISS,
OR, IN THE ALTERNATIVE, CONVERT TO CHAPTER 7**

THE UNITED STATES OF AMERICA, on behalf of its agency, the Internal Revenue Service (the “Service”), moves that this case be dismissed, or, in the alternative, converted to a case under Chapter 7 pursuant to 11 U.S.C. § 521(j) (hereinafter all statutory references are to the Bankruptcy Code unless otherwise stated).

IN SUPPORT THEREOF, the United States alleges:

1. On November 9, 2010, the debtor filed a chapter 13 bankruptcy petition for relief.
2. As of the date hereof, the Service has no record of receiving the debtor’s Federal income tax return (Form 1040) for taxable year 2009.
3. Under section 521(j)(3), if debtor fails to file a tax return that become due after the commencement of the case, the Service may request that the Court enter an order converting or dismissing the case. If the debtor does not file the required return within 90 days after such request is filed, the Court shall convert or dismiss the case, whichever is in the best interests of creditors and the estate.
4. Accordingly, unless the debtor files the 2009 tax return by April 18, 2011 (90 days from the date hereof), this case shall be dismissed or converted. To avoid a factual dispute over

the filing of the return, the Service requests that the original return be provided to the undersigned by such date.

WHEREFORE, the United States respectfully requests that this Court enter an order dismissing this case, or, in the alternative, converting the case to Chapter 7, whichever is in the best interests of the creditors and the estate, upon an affidavit from the undersigned that the return was not filed by April 18, 2011.

Respectfully submitted,

UNITED STATES OF AMERICA
By its attorneys,
CARMEN M. ORTIZ
United States Attorney

Date: January 18, 2011

/s/ Andrea D. Haddad
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CERTIFICATE OF SERVICE

I, ANDREA D. HADDAD, Special Assistant United States Attorney, hereby certify that I have served a copy of the within **MOTION TO DISMISS** by electronic transmission to the list of attorneys who are currently on the list to receive e-mail notices for their case, and to the following by first-class mail:

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Date: January 18, 2011

/s/ Andrea D. Haddad
ANDREA D. HADDAD
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United States Attorney